

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3197 of 1987

with

SPECIAL CIVIL APPLICATION No 5175 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

A'BAD MUNI. CORPORATION

Versus

BHUPATBHAI D. PUROHIT

Appearance:

1. Special Civil Application No. 3197 of 1987
MR NIKIL KARIEL FOR MR. BP TANNA for Petitioner
MR. PRABHAKAR UPADHAYAY for Respondent No. 1

2. Special Civil Application No. 5175 of 1990

MR. PRABHAKAR UPADHAYAY AND MR. I.A. PATEL for
petitioner
MR. D.C. RAVAL FOR MR. M.R. ANAND for the respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 10/03/2000

ORAL JUDGEMENT

Both these petitions are directed against the award made by the Labour Court, Ahmedabad, on 19.11.1986 in Reference (LCAs) No. 1003 of 1978 filed by the respective petitioners against the award to the extent it went against them.

2. Special Civil Application No. 3197 of 1987 has been filed by the Ahmedabad Municipal Corporation challenging the impugned award by which the Labour Court directed the workman B.D. Purohit to be reinstated as a Laboratory attendant in the Infectious Disease Hospital on his original post with continuity of service and the direction to pay the backwages for the period from 1.3.1976 to 9.6.1981 at the rate of wages paid to him when he was appointed as Laboratory Attendant in the hospital.

3. Special Civil Application No. 5175 of 1990 has been filed by the workman against the same award in so far as it denies difference of backwages to the petitioner of the post of Laboratory Attendant and Ward Boy from 10.6.1981 onwards until reinstatement.

4. The Tribunal on the basis of the material on record and the deposition of the witnesses came to the finding that the post of Laboratory Attendant was a class IV post in the scale of Rs. 70-1-80. It was also found that the action of the Medical Officer in not issuing further appointment order beyond 1.3.1976 of the workman as Laboratory Attendant was not justified. It was found that the workman was in employment with the Corporation with effect from 14.5.1974 and had worked upto 28.2.1976 thereby completing continuous service of one year with the Corporation. It was, therefore, found that since no notice pay was given, the retrenchment of the workman was illegal and the workman was entitled to be restored as Laboratory Attendant in the Infectious Disease Hospital. It was found that the workman was taken in employment from 10.6.1981 and that thereafter he had been continuously working with the Corporation and therefore, he was entitled to backwages only from 1.3.1976 to 9.6.1981 at the rate of wages which he was getting when he was appointed as a Laboratory Attendant. The Tribunal considering the claim to arrears in the scale of 260-400 held that the workman had not produced any evidence to prove that he was entitled to that pay scale. On the basis of the evidence on record, the Tribunal found the pay scale of Laboratory Attendant was Rs. 70-1-80.

5. It appears that the pre-revised scale of certain

categories of employees was Rs. 70-80. The learned counsel for the workman stated, on instructions, that when the workman was discontinued on 28.2.1976, his scale was Rs. 70-1-80. It appears that the said scale was revised to Rs. 196-232. The scale of Rs. 260-400 was applicable to Laboratory Attendants who were having qualification of S.S.C. and therefore who were in the pre-revised scale of Rs. 91-130. Admittedly, the workman was not in the scale of Rs. 91-130 because he was not having the qualification of S.S.C. The Tribunal taking note of the fact that Dr. A.M. Barot in his deposition at Exh. 24 had stated that the post of Laboratory Attendant in the Infectious Disease Hospital was in the scale of Rs. 70-1-80, rightly came to the conclusion that the workman was not entitled to the pay scale of Laboratory Attendant of Rs. 260-400.

6. The finding of the Tribunal that the termination of the workman was contrary to law because he was not given any retrenchment compensation is clearly supported by the material on record. The workman had completed continuous service of one year with the Corporation after he was last employed on 14.5.1974 and therefore his service could not have been terminated without payment of retrenchment compensation. The Tribunal has, therefore, rightly found that the order of the Corporation putting an end to the workman's service was illegal and unjust. Since the workman was working as Laboratory Attendant in the non-SSC scale at the time when his service came to be terminated, he was rightly ordered to be restored to the same position in the Infectious Disease Hospital with continuity of service at the rate of wages paid to him when he was appointed as Laboratory Attendant. Since the workman was employed as Ward Boy from 10.6.1981 he was not entitled to any wages after 10.6.1981. The claim of the workman to difference of wages of Laboratory Attendant and Ward Boy proceeds on an erroneous footing that he was entitled to the scale of Rs. 260-400 as Laboratory Attendant. As stated, the workman was in the pre-revised scale of Rs. 70-80 as Laboratory Attendant (non-SSC), his corresponding revised pay scale would be Rs. 196-232, which was also the pay scale of a Ward Boy as noted by the Tribunal. Therefore, there is no question of awarding any difference of pay to the workman on the footing that he should be treated as if in the pay scale of Rs. 260-400. The claim of the workman in the petition filed by him therefore cannot be sustained.

The impugned award has been made on the basis of the relevant material on record and the Tribunal has, for cogent reasons and in lawful exercise of its

jurisdiction, made the impugned award which warrants no interference by this court in either of these two petitions. Both these petitions are therefore rejected. Rule is discharged in each of them with no order as to costs.

(R.K. ABICHANDANI, J)

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